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Appeal Brief

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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Examiner: Tsan-Yu J. Huang

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APPEAL BRIEF

Appellant appeals the status of Claims 1 – 19 as presented in response to the final Office Action dated December 16, 2008, and submits this Appeal Brief.

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1. Real Party in Interest

The real party in interest is Koninklijke Philips Electronics, N. V., the assignee of the entire right, title and interest in and to the subject application by virtue of an assignment recorded with the Patent Office on December 14, 2004 at Reel/Frame 016753/0152.

2. Related Appeals and Interferences

None.

3. Status of Claims

- a) Claims 1 – 19 are pending. Claims 1, 7, 11 and 17 are independent.
- b) Claims 1 – 19 stand rejected and are under appeal.

4. Status of Amendments

An amendment under 37 C.F.R. § 1.111, mailed to the PTO on October 24, 2008, in response to a non-final Office Action dated July 28, 2008, was entered. A response under 37 C.F.R. § 1.116 was filed on February 16, 2009 in response to a final Office Action dated December 16, 2008. In the February 16, 2009 response, none of the pending claims were amended. No responses/amendments were filed subsequent to the February 16, 2009 response. The claims listed in section 8 “Claims Appendix” of this Appeal Brief correspond to the claims submitted in Appellant’s response of October 24, 2008.

5. Summary of Claimed Subject Matter

It should be explicitly noted that it is not the Appellant's intention that the currently claimed or described embodiments be limited to operation within the illustrative embodiments described below beyond what is required by the claim language. Further description of the illustrative embodiments are provided indicating portions of the claims which cover the illustrative embodiments merely for compliance with requirements of this appeal without intending to read any further interpreted limitations into the claims as presented.

The claimed invention, as recited in claim 1, is directed to a system, comprising: a storage medium (page 6, line 3); read means for reading content data and control logic data from the storage medium (page 6, lines 5 – 6), the control logic data being uniquely linked to the storage medium (page 6, lines 31 - 34), the control logic data comprising executable code or instructions (page 10, lines 10 – 14); processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output (page 10, lines 17 – 21); and control means, coupled to the read means (page 10, lines 17 – 18), for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed (page 10, lines 7 – 9).

The claimed invention, as recited in claim 7, is directed to a storage medium comprising content data and control logic data (page 6, line 6), the control logic data being uniquely linked to the storage medium (page 6, lines 31 - 34), the control logic data comprising executable code or instructions (page 10, lines 10 – 14).

The claimed invention, as recited in claim 11, is directed to a host apparatus, comprising: read means for reading content data and control logic data from a storage medium (page 6, lines 5 – 6), the control logic data being uniquely linked to the storage medium (page 6, lines 31 - 34), the control logic data comprising executable code or instructions (page 10, lines 10 – 14); processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output (page 10, lines 17 – 21); and control means, coupled to the read means, for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed (page 10, lines 7 – 9) to enable the host apparatus to establish that the host apparatus is installed in a compliant system (page 10, lines 22 – 25) and, when installed in the compliant system, to enable the processing means to feed the processed content data to an output (page 10, lines 17 – 21).

The claimed invention, as recited in claim 17, is directed to a system, comprising: a host apparatus that includes: read means for reading content data and control logic data from a storage medium (page 6, lines 5 – 6), the control logic data being uniquely linked to the storage medium (page 6, lines 31 - 34), the control logic data comprising executable code or instructions (page 10, lines 10 – 14); processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output (page 10, lines 17 – 21); and control means, coupled to the read means, for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed (page 10, lines 7 – 9) to enable the host apparatus to establish that the host apparatus is installed in a compliant system (page 10, lines 22 – 25) and, when installed in the compliant system, to enable the

processing means to feed the processed content data to an output (page 10, lines 17 – 21); and a multimedia terminal coupled to the output of the host apparatus (page 6, lines 15 – 16).

6. Grounds of Rejection to be Reviewed on Appeal

- A. Whether claims 1 – 4, 7, 9 and 10 are properly rejected under 35 U.S.C. §102(b) over Heemskerk (US 6,031,815)
- B. Whether claims 5, 6 and 8 are properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of Nerlikar (US 5,905,798)
- C. Whether claims 11 – 14, 17 and 19 are properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor (US 5,745,568)
- D. Whether claims 15 and 16 are properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor and further in view of Nerlikar
- E. Whether claim 18 is properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor and further in view of Tavor (US 6,070,154)

7. Argument

Appellant respectfully traverses the rejections in accordance with the detailed arguments set forth below.

A. Claims 1 – 4, 7, 9 and 10 are not properly rejected under 35 U.S.C. §102(b) over Heemskerk.

In order for a reference to anticipate a claim the MPEP 2131 requires the reference to teach each and every element of that claim. It is respectfully submitted that the Examiner failed to establish a *prima facie* case of anticipation.

1. Claim 1

Appellant's claim 1, in part, requires:

“the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions.”

In the Office Action, page 8, the Examiner asserted that the address information (Heemskerk, column 7, lines 27 – 41) is equivalent to the claimed control logic data. In the Office Action, page 6, although the Examiner conceded that Heemskerk does not teach the specific limitation of the control logic data comprising executable code or instructions, as claimed, the Examiner further alleged that the difference(s) are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. Appellant respectfully disagrees with such allegation.

Appellant submits that the address information as disclosed by Heemskerk is not the same as the claimed control logic data and that the differences are not merely non-

functional descriptive material. There are fundamental operational differences between Heemskerk and the claimed invention.

Heemskerk teaches that the system controller uses the data from the address information as input for positioning the read/write head (column 7, lines 32 – 33).

Appellant submits that the program code or instructions that control the positioning are already preinstalled in the system controller, because, as conceded by the Examiner, the address information of Heemskerk does not contain executable code or instructions.

Since the program code or instructions that control the positioning are not read from the medium, the program code or instructions used in Heemskerk are the same regardless of the medium being read. That is, the program code or instructions in Heemskerk are not uniquely linked to the storage medium. Since the address information does not contain executable code or instructions, it is clearly not the claimed “*control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions.*” The difference is functional because executable code or instructions can be used to program or control a processor, while address information alone cannot. Such difference is not merely found in the non-functional descriptive material.

Furthermore, Appellant submits that the system controller of Heemskerk does not need to have a step for reading and executing any code or instructions from a medium. Heemskerk only requires the reading of address information, but does not require any additional functionality of executing codes or instructions that are read from the storage medium. In contrast, the claimed invention requires the control means to execute code or instructions read from a medium. Appellant submits that the capability to run

program code already preinstalled in the controller is fundamentally different from the capability to read and execute program code that is read from and uniquely linked to a storage medium. Therefore, the control logic data is functionally involved in the steps recited and the functionalities involved are different from that of Heemskerk.

Since the address information of Heemskerk does not contain executable code or instructions, and the differences between the address information and the claimed control logic data are clearly more than that found in non-functional descriptive material and are clearly functionally involved in the steps recited, Appellant submits that for at least the above reasons, claim 1 is patentable over Heemskerk, and the rejection of claim 1 under 35 U.S.C. 102(b) should be reversed.

2. Claim 7

Claim 7, in part, also requires:

“the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions.”

Since claim 7 requires the similar features as recited in claim 1, Appellant essentially repeats the above arguments for claim 1 and applies them to claim 7, pointing out why Heemskerk fails to disclose the above claimed features. Therefore, for at least the above reasons, claim 7 is patentable over Heemskerk, and the rejection of claim 7 under 35 U.S.C. 102(b) should be reversed.

3. Claims 2 – 4, 9 and 10

Claims 2 – 4, 9 and 10 respectively depend from claims 1 and 7, and thus inherit

all the respective features of claims 1 and 7. Accordingly, since claims 1 and 7 are patentable over Heemskerk, dependent claims 2 – 4, 9 and 10 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein and the rejection of claims 2 – 4, 9 and 10 should be reversed.

B. Claims 5, 6 and 8 are not properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of Nerlikar.

Claims 5, 6 and 8

Claims 5, 6 and 8 respectively depend from claims 1 and 7, and thus inherit all the respective features of claims 1 and 7. In the Office Action, the Examiner apparently only relied on the secondary reference Nerlikar for teaching the additional features recited in the dependent claims and did not allege that Nerlikar teaches the features of claim 1, which Heemskerk was relied upon as teaching. To avoid repetition, the dependent claims will not be discussed in detail with the understanding that they are patentable at least for the same reasons as discussed above. Accordingly, since Nerlikar fails to cure the deficiencies in Heemskerk with respect to features in claims 1 and 7, dependent claims 5, 6 and 8 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein and the rejections should be reversed.

C. Claims 11 – 14, 17 and 19 are not properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor.

1. Claims 11 and 17

Claims 11 and 17, each in part, requires:

“the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions.”

Since claims 11 and 17 require a similar features as recited in claim 1, Appellant essentially repeats the above arguments for claim 1 and applies them to claims 11 and 17, pointing out why Heemskerk fails to disclose the above claimed features. In the Office Action, the Examiner apparently only relied on the secondary reference O'Connor for teaching the additional features recited in claims 11 and 17 and did not allege that O'Connor teaches the features of claim 1, which Heemskerk was relied upon as teaching. Accordingly, since O'Connor fails to cure the deficiencies in Heemskerk with respect to features in claims 11 and 17, the rejections should be reversed.

2. Claim 12 – 14 and 19

Claims 12 – 14 and 19 respectively depend from claims 11 and 17, and thus inherit all the respective features of claims 11 and 17. In the Office Action, the Examiner apparently only relied on the secondary reference O'Connor for teaching the additional features recited in the dependent claims and did not allege that O'Connor teaches the above discussed distinguishing features, which Heemskerk was relied upon as teaching. To avoid repetition, the dependent claims will not be discussed in detail with the understanding that they are patentable at least for the same reasons as discussed above. Accordingly, since O'Connor fails to cure the deficiencies in Heemskerk with respect to features in claims 11 and 17, dependent claims 12 – 14 and 19 are also allowable by virtue of their dependency, as well as the additional subject

matter recited therein and the rejections should be reversed.

D. Claims 15 and 16 are not properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor and further in view of Nerlikar.

Claims 15 and 16

Claims 15 and 16 depend from claim 11, and thus inherits all the features of claim 11. In the Office Action, the Examiner apparently only relied on the secondary references O'Connor and Nerlikar for teaching the additional features recited in the dependent claims and did not allege that O'Connor or Nerlikar teaches the features of claim 11, which Heemskerk was relied upon as teaching. To avoid repetition, the dependent claims will not be discussed in detail with the understanding that they are patentable at least for the same reasons as discussed above. Accordingly, since O'Connor and Nerlikar fail to cure the deficiencies in Heemskerk with respect to features in claim 11, dependent claims 15 and 16 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein and the rejections should be reversed.

E. Claim 18 is not properly rejected under 35 U.S.C. §103(a) over Heemskerk in view of O'Connor and further in view of Tavor.

Claim 18

Claim 18 depends from claim 17, and thus inherits all the features of claim 17. In the Office Action, the Examiner apparently only relied on the secondary references O'Connor and Tavor for teaching the additional features recited in the dependent claim

and did not allege that O'Connor or Tavor teaches the features of claim 17, which Heemskerk was relied upon as teaching. To avoid repetition, the dependent claim will not be discussed in detail with the understanding that it is patentable at least for the same reasons as discussed above. Accordingly, since O'Connor and Tavor fail to cure the deficiencies in Heemskerk with respect to features in claim 17, dependent claim 18 is also allowable by virtue of its dependency, as well as the additional subject matter recited therein and the rejection should be reversed.

Conclusion

None of the cited references, either taken singly or in combination, teach or suggest all of the claim limitations of the pending claims. Accordingly, it is respectfully requested that the Board reverse the rejection of claims 1 – 4, 7, 9 and 10 under 35 U.S.C. §102(b) and reverse the rejection of claims 5, 6, 8 and 11 – 19 under 35 U.S.C. §103(a).

Respectfully submitted,

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8. CLAIMS APPENDIX

1. (Previously presented) A system, comprising:

a storage medium;

read means for reading content data and control logic data from the storage medium, the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions;

processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output; and

control means, coupled to the read means, for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed.

2. (Previously presented) The system of claim 1, wherein the read means are arranged for reading out variations in a physical parameter of the storage medium, said variations exhibiting a modulation pattern representing a necessary parameter for obtaining access to the control logic data.

3. (Previously presented) The system of claim 2, wherein the control logic data is stored encrypted on the storage medium, and the necessary parameter comprises a decryption key to decrypt the encrypted control logic data.

4. (Previously presented) The system of claim 2, wherein the necessary parameter comprises authentication data for the control logic data, and the control

means are arranged for verifying the authenticity of the control logic data using the authentication data before executing the control logic data.

5. (Previously presented) The system of claim 1, wherein the storage medium comprises an integrated circuit which contains a necessary parameter for obtaining access to the control logic data, and the read means are arranged for reading out the necessary parameter from the integrated circuit.

6. (Previously presented) The system of claim 5, wherein the read means are further arranged for storing a value of an additional parameter on the integrated circuit.

7. (Previously presented) A storage medium comprising content data and control logic data, the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions.

8. (Previously presented) The storage medium of claim 7, comprising an integrated circuit which contains a necessary parameter for obtaining access to the control logic data.

9. (Previously presented) The storage medium of claim 7, exhibiting variations in a physical parameter of the storage medium, said variations exhibiting a modulation pattern representing a necessary parameter for obtaining access to the control logic data.

10. (Previously presented) The storage medium of claim 7, comprising an optical storage medium.

11. (Previously presented) A host apparatus, comprising:

read means for reading content data and control logic data from a storage medium, the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions;

processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output; and

control means, coupled to the read means, for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed to enable the host apparatus to establish that the host apparatus is installed in a compliant system and, when installed in the compliant system, to enable the processing means to feed the processed content data to an output.

12. (Previously presented) The host apparatus according to claim 11, wherein the read means are arranged for reading out variations in a physical parameter of the storage medium, said variations exhibiting a modulation pattern representing a parameter for obtaining access to the control logic data.

13. (Previously presented) The host apparatus according to claim 12, wherein the control logic data is stored encrypted on the storage medium, and the parameter

comprises a decryption key for decrypting the encrypted control logic data.

14. (Previously presented) The host apparatus according to claim 12, wherein the parameter includes authentication data for the control logic data, and the control means are arranged for verifying the authenticity of the control logic data using the authentication data before executing the control logic data.

15. (Previously presented) The host apparatus according to claim 11, wherein the storage medium includes an integrated circuit containing a parameter for obtaining access to the control logic data, and the read means are arranged for reading the parameter from the integrated circuit.

16. (Previously presented) The host apparatus according to claim 15, wherein the read means are further arranged to store a value of an additional parameter on the integrated circuit.

17. (Previously presented) A system, comprising:

a host apparatus that includes:

read means for reading content data and control logic data from a storage medium, the control logic data being uniquely linked to the storage medium, the control logic data comprising executable code or instructions;
processing means, coupled to the read means, for processing the content data and feeding the processed content data to an output; and

control means, coupled to the read means, for executing the control logic data and for controlling the processing means in accordance with the control logic data being executed to enable the host apparatus to establish that the host apparatus is installed in a compliant system and, when installed in the compliant system, to enable the processing means to feed the processed content data to an output; and
a multimedia terminal coupled to the output of the host apparatus.

18. (Previously presented) The system according to claim 17, wherein the system is configured for engaging in an authentication protocol between the host apparatus and the multimedia terminal to establish a common encryption key for encrypting the processed content data before feeding the processed content data to the output.

19. (Previously presented) The system according to claim 17, comprising one of a Compact Disc player, a DVD player, a personal computer, a television system and a radio system.

9. RELATED EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.